



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF JOVANOVIĆ AND OTHERS v. SERBIA

*(Applications nos. 13907/09, 15650/09, 16874/09, 17233/09, 27787/09,
31028/09, 6997/10 and 61218/11)*

JUDGMENT

STRASBOURG

15 July 2014

This judgment is final but it may be subject to editorial revision.

In the case of Jovanović and Others v. Serbia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Ján Šikuta, *President*,

Dragoljub Popović,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 24 June 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in eight applications (see the Annex to this judgment) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) between 3 March 2009 and 6 January 2010. The applicants were all Serbian nationals, and their further personal details are set out in the said Annex.

2. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

3. On 13 June 2012 and 23 August 2012 the applications were communicated to the Government.

4. The Government objected to the examination of the applications by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were former employees of “*Društveno preduzeće Industrija mesa ‘Crvena zvezda’*” Kragujevac (hereinafter “the debtor”), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

6. On 15 October 2002 the Commercial Court (*Trgovinski sud*) in Kragujevac opened insolvency proceedings in respect of the debtor (St. 1079/02).

7. The applicants duly submitted their claims for the payment of due salary arrears and related employment benefits.

8. On 25 August 2003 and 11 October 2004 the Commercial Court accepted some of the applicants' claims. As regards the remainder of their claims, it instructed them to initiate a regular civil suit. Two of the applicants did so and on 31 May 2004, 1 June 2004 and 21 January 2005 the Commercial Court ordered the debtor to pay them different amounts on account of salary arrears and related employment benefits, together with statutory interest and legal costs.

9. On 20 February 2009 the Commercial Court terminated the insolvency proceedings. This decision was published in the Official Gazette of the Republic of Serbia on 27 March 2009 (no. 21/09) and became final on 16 July 2009.

10. On 26 February 2010 the debtor ceased to exist.

11. The court decisions rendered in the applicants' favour on 25 August 2003, 11 October 2004, 31 May 2004, 1 June 2004 and 21 January 2005 (see paragraph 8 above) became final on an unspecified date. They remain only partly enforced to the present day.

II. RELEVANT DOMESTIC LAW

12. The domestic law concerning the status of socially/State-owned companies and insolvency proceedings is outlined in the cases of *Marčić and Others v. Serbia*, no. 17556/05, § 29, 30 October 2007; *R. Kačapor and Others v. Serbia*, nos. 2269/06 et al., §§ 68-76, 15 January 2008; *Adamović v. Serbia*, no. 41703/06, §§ 17-21, 2 October 2012; and *Sokolov and Others v. Serbia* (dec.), nos. 30859/10, § 20, 14 January 2014.

THE LAW

I. JOINDER OF THE APPLICATIONS

13. The Court considers that, in accordance, with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common and factual legal background.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicants complained about the non-enforcement of the final court decisions rendered in their favour. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

15. The Government argued that the applications were incompatible *ratione temporis* and *ratione personae* with the provisions of the Convention and/or that they were inadmissible on non-exhaustion grounds.

16. The Court recalls that it has already considered similar arguments and rejected them (see, for example, *Marčić and Others*, cited above, §§ 42-43; *R. Kačapor and Others*, cited above, §§ 97-98; *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, 31 May 2011; *Adamović*, cited above, §§ 28-31; and *Marinković v. Serbia* (dec.), no. 5353/11, § 59, 29 January 2013). It sees no reason to depart from this approach in the present cases. Therefore, the Court decides to reject the Government’s admissibility objections.

17. Furthermore, although the respondent Government did not raise any objection as to the applicants’ observance of the six-month rule provided for by Article 35 § 1 of the Convention, this issue calls for the Court’s consideration *proprio motu*. The Court has held that, in the context of the non-enforcement of domestic court decisions against insolvent socially-owned companies, the applicants should lodge their applications, at the latest, within six months as of the date when the decision on the termination of the insolvency proceedings had become final (see *Sokolov and Others*, cited above, § 34). In the present cases, the Court notes that the decision terminating the insolvency proceedings against the debtor became final on 16 July 2009 (see paragraph 9 above). As the applicants lodged their applications between 3 March 2009 and 6 January 2010, they acted diligently for the purposes of the six-month rule.

18. As the applications are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, they must be declared admissible.

B. Merits

19. The Government maintained that the respondent State cannot be held liable for non-enforcement of judicial decisions rendered in insolvency proceedings.

20. The Court has already examined a similar situation in *Marčić and Others*, §§ 57-60 and *Adamović*, §§ 37-41, both cited above. It held that the State was responsible for the non-enforcement of the court decisions at stake, regardless of the fact that they had been rendered in insolvency proceedings. It therefore found a breach of Article 6 of the Convention and/or Article 1 of Protocol No. 1.

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present circumstances. Accordingly, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention also in the cases under consideration.

22. Having reached this conclusion, the Court does not find it necessary to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage, costs and expenses

24. In respect of pecuniary damage, the applicants in essence requested that the State be ordered to pay, from its own funds, the sums awarded by the final court decisions rendered in their favour. In addition, Mr Slobodan Jovanović claimed 2,000 euros (EUR) for his services as the President of the Creditors' Board in the insolvency proceedings.

25. The applicants further claimed different amounts, going from EUR 2,000 to EUR 7,000 in respect of the non-pecuniary damage suffered.

26. Lastly, the applicants claimed EUR 500 each for the legal costs incurred before the domestic courts and the Court.

27. The Government considered the claims excessive and unjustified.

28. Having regard to the violations found in the present cases and its own case-law (see, for example, *R. Kačapor and Others*, §§ 123-26; and *Crnišanić and Others v. Serbia*, nos. 35835/05 et seq., § 139, 13 January 2009), the Court considers that the applicants' claims for pecuniary damage concerning the payment of the outstanding debts awarded by the Commercial Court must be accepted. The Government shall therefore pay the applicants the sums awarded in the final domestic decisions specified in the Annex, less any and all payments received on those basis in the meantime. As far as Mr Slobodan Jovanović's additional pecuniary claim is concerned, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

29. As regards non-pecuniary damage, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in these cases. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award EUR 2,000 to each of the applicants to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

30. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay to each of the applicants, from its own funds and within three months, the sums awarded in the final

domestic decisions rendered in their favour specified in the Annex, less any amounts which may have already been paid on those basis;

(b) that the respondent State is to pay to each of the applicants, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariálana Tsirli
Deputy Registrar

Ján Šikuta
President

ANNEX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Final domestic decision details
1.	13907/09	03/03/2009	Slobodan JOVANOVIĆ 16/11/1960 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004
2.	15650/09	10/03/2009	Svetlana GAJIĆ 18/04/1959 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004
3.	16874/09	16/03/2009	Milan JOVANOVIĆ 09/04/1959 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004
4.	17233/09	14/03/2009	Sladana STANOJEVIĆ 16/04/1965 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004
5.	27787/09	25/03/2009	Radmil LEKIĆ 01/10/1957 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004
6.	31028/09	07/03/2009	Nebojša DREKALOVIĆ 10/09/1958 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> IV.P.1796/03 of 31/05/2004 <u>3. Commercial Court in Kragujevac</u> V.P.1787/03 of 01/06/2004
7.	6997/10	06/01/2010	Snežana OGNJANOVIĆ 17/02/1961 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.P.1832/03 of 21/01/2005
8.	61218/11	18/03/2009	Vesna PETROVIĆ 03/02/1972 Kragujevac	<u>1. Commercial Court in Kragujevac</u> I.St.1079/02 of 25/08/2003 <u>2. Commercial Court in Kragujevac</u> I.St.1079/02 of 11/10/2004